

Pre-Appeal Brief Request for Review

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Dated: January 22, 2009

Signature: Donna Dobson

(Donna Dobson)

Docket No.: 68554/P001US/10801996
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Woodrow W. Gandy et al.

Application No.: 09/927,972

Confirmation No.: 5997

Filed: August 10, 2001

Art Unit: 2169

For: METHOD FOR ENTERING, RECORDING,
DISTRIBUTING AND REPORTING DATA

Examiner: L. Black

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Madam:

INTRODUCTORY COMMENTS

Applicant requests review of the rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated below.

Claims 56-70 and 72-88 are rejected under 35 U.S.C. § 103(a) as being unpatentable over various combinations. In addition to the arguments outlined below, Applicant further references the panel to the Amendment After Final Action filed by Applicant on December 19, 2008, as each of those arguments are still believed valid despite Examiner's comments in the Advisory Action of December 31, 2008.

I. ISSUES

- A. Walker does not Teach a Screen Presentation having an ROS Portion for a Particular Medical Complaint; further, a Diagnosis is not a Complaint

Claim 56 recites:

certain of said presentations having at least an HPI portion, and

An ROS portion assists a medical professional with undertaking a review of a patient's overall systems (*e.g.*, circulatory, GI, neurological, etc.). An screen presentation having an ROS portion "for a particular medical complaint" will contain common systems that should be reviewed in response to the patient's complaint.

A complaint is the beginning stage of patient care. Once a complaint is heard, a medical professional must gather various information regarding the patient's history, the history of the problem, and examination information. The purpose of gathering complaint information is to arrive at a diagnosis. Claim 56, and its corresponding dependent claims, are directed toward assisting the medical professional with gathering complaint information. With the gathered information, the medical professional will then generate the diagnosis and provide a course of treatment.

Applicant agrees with Examiner that Zak fails to teach an ROS portion for a particular medical complaint. Examiner relies on Walker ¶ [0102], Fig. 9a, as teaching this limitation. However, Walker is directed to the creation of an ROS portion for a diagnosis database template (*See* ¶¶ [0097-0099]). In Walker, multiple templates are generated and stored in a database, each template being for a specific medical diagnosis. Walker populates these diagnosis templates with patient examination data that has already been obtained without use of the templates of Walker. *See* ¶ [0095]. Thus, since claim 56 specifically recites that the screen presentations are "for capturing medical information," and since Walker teaches templates for processing information that has already been captured, it is clear that these are different concepts. The functionality of Walker, as outlined above, shows that Walker does not teach the above recited limitation. The asserted ROS portion of Walker is not "for a particular medical complaint" as required by the claim; rather it is for a probable diagnosis. *See* ¶ [0100]. The asserted templates of Walker cannot be construed as being "for a particular medical complaint" because all of the patient data that would be taken in response to a medical complaint is already obtained when the physician is about to make a diagnosis using the templates of Walker. Because, as discussed above, in the art of medicine, complaints and diagnoses are significantly different, both substantively and temporally, the proposed combination fails to teach the above recited limitation of claim 56.

Applicant notes that Examiner, in the Advisory Action, appears to take issue with Applicant's use of "chief medical complaint" and "particular medical complaint" (see claims 56 and 70). However, Applicant fails to see how utilizing different claim terms in this

circumstance, which Applicant is clearly allowed to do, has any bearing on the fact that a “complaint” is different than a “diagnosis.”

B. Zak does not Teach a Pre-identified Graphic of an Anatomical Area Pertinent to a Chief Medical Complaint

Claim 60 depends on claim 56 and recites:

wherein certain of said presentations comprise a portion having a pre-identified graphic of an anatomical area pertinent to said chief medical complaint

Examiner relies on Figures 3-4 of Zak as teaching this limitation. However, as explicitly taught by Zak, the “body GUI” that is displayed is selected by a user “by simply touching the display of a particular body part...[so] the EMT user can easily associate focal patient complaints and exam findings with a particular body region, and ‘zoom in’ to document finer levels of detail. . . .” Zak at ¶ [0076]. In other words, the user must identify and/or narrow down the area of the body GUI that is displayed. These extraneous steps in Zak slow functionality, which in an emergency setting, is undesirable. The above-recited claim requires that the graphic be “pre-identified” and “pertinent to said chief medical complaint.” An example embodiment of this limitation may be seen in Figure 9A where the complaint is “Abdominal Pain” and the corresponding body graphic is a pre-identified area (in this case the abdominal area) which is pertinent to the complaint. In Zak, the user must select the pertinent graphic. Thus, this limitation of claim 60 is clearly not taught by Zak. Accordingly, for at least these reasons, claim 60 is allowable.

C. Zak does not Teach a Screen Presentation for Capturing Physical Exam Information which has Pre-identified Selectable Elements Pertaining to a Chief Medical Complaint

Claim 70 recites:

capturing medical history information pertaining to said patient on a first screen presentation of said selected template” and “capturing physical exam information pertaining to said patient on a second screen presentation of said selected template, said second screen presentation being one of said plurality of template presentations having pre-identified selectable data elements pertaining to said chief medical complaint.”

Examiner has cited Figures 2 and 3, of Zak as teaching this limitation. These figures show two screens that capture history of the selected problem (*i.e.*, history information). In all patient charting applications in the medical industry, medical personnel must compile

physical examination data. In fact, Figures 2 and 3 of Zak clearly have the problem form tab highlighted (see top right). Zak further shows that an Exam form exists in the displayed program (see top left of Figures 2 and 3). However, Zak does not teach that the physical examination information is captured on a screen presentation “having pre-identified selectable data elements pertaining to said chief medical complaint.” Therefore, Applicant respectfully submits that claim 70 is allowable over the cited art.

D. Pre-generated Reports do not Teach Reports that are Generated in Response to User Selections

Applicant has also previously set forth arguments with regards to claim 86 which are hereby incorporated by reference. *See* Response After Final at 11-12. Applicant submits that the pre generated reports of Walker do not teach generating a report by “correlating information corresponding to selections of pre-identified data elements.” In other words, a report that is pre-generated cannot be said to be generated in response to correlating selections of data elements pertaining to a chief medical complaint.

E. The Drawing Tool of Haung does not Function to Indicate Positive Selections Data Elements by Encircling Textual Labels of the Data Elements

Claim 78 recites:

a plurality of said presentations having pre-identified selectable data elements pertaining to said chief medical complaint, wherein positive selections of the pre-identified selectable data elements are configured to be indicated by encircling one or more textual labels of said data elements

It is noted that in the Advisory Action, Examiner did not address Applicant’s arguments for claim 78. In fact, in reference to claim 78, Examiner asserts that Applicant argued against an incorrect reference (Walker instead of Haung). However, Applicant specifically addressed Haung on pg. 14 of the Response After Final.

Huang teaches a text editing/annotation tool. *See* Huang Abstract. The system allows a user to mark a document while automatically determining what kind of writing tool should apply (*e.g.*, pen, highlighter, etc.). *Id.* at col. 4 ll. 62-66. These teachings are irrelevant to the present application. The marking or annotating in Huang does not function to indicate positive selections of the pre-identified selectable data elements. As such, Examiner would have to rely on other art for teaching indicating such selections. Both Zak and Walker teach the use radio buttons for indicating selections, which is insufficient to teach

the above recited limitation because checking a radio button is clearly not “encircling one or more textual labels.” The disadvantages of radio buttons are described in [0002] in the background section of the present application. The present claims are specifically directed to overcoming such disadvantages. Any combination of Zak and Walker with Huang would necessarily produce a product which had radio buttons to indicate selections. To the extent that a user could mark other text on a screen, such marking would serve no function. Accordingly, Applicant submits that the proposed combination fails to teach “wherein positive selections of the pre-identified selectable data elements are configured to be indicated by encircling one or more textual labels of said data elements.”

F. Conclusion

In view of the above, Applicant respectfully requests that the review panel reverse the outstanding rejections in the present application. The required fee for the Notice of Appeal filed with this request will be paid by credit card. If any additional fee is due at this time, or during the pendency of this Application pursuant to 37 CFR 1.16 through 1.21 and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees, please charge any additional fees required or credit any overpayment to Deposit Account No. 06-2380, under Order No. 68554/P001US/10801996 from which the undersigned is authorized to draw.

Dated: January 22, 2009

Respectfully submitted,

By 

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